

Minutes Formal City Council Meeting December 13, 2007

Minutes of the Formal Council Meeting of Thursday, December 13, 2007, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman
Vice Mayor Hut Hutson
Councilmember P Ben Arredondo
Councilmember Barbara J. Carter
Councilmember Mark W. Mitchell
Councilmember Onnie Shekerjian

COUNCIL ABSENT:

Councilmember Shana Ellis

Mayor Hallman called the meeting to order at 7:40 p.m.

1. Councilmember Arredondo gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.
3. **MINUTES**
 - A. Approval of Council Meeting Minutes
Motion by Councilmember Carter to approve the following **COUNCIL MEETING MINUTES**.
Second by Vice Mayor Hutson. Motion passed unanimously on a voice vote.
 1. Affordable Housing Summit – October 20, 2007 [20071213afs01.pdf](#)
 - B. Acceptance of Board & Commission Meeting Minutes
Motion by Councilmember Carter to accept the following **COMMITTEE & BOARD MEETING MINUTES**. Second by Councilmember Shekerjian. Motion passed unanimously on a voice vote.
 2. Commission on Disability Concerns – Awards Committee – November 1, 2007
[20071213cdc01.pdf](#)
 3. Golf Committee – September 5, 2007 [20071213st05.pdf](#)
 4. Mayor's Youth Advisory Commission – November 20, 1007 [20071213myac01.pdf](#)
4. **REPORTS AND ANNOUNCEMENTS**

A. Mayor's Announcements

- Mayor Hallman read a **National Incident Management System (NIMS) Proclamation** declaring that Resolution 2007.108 was passed and adopted by the City Council on December 6, 2007. He presented the proclamation to Fire Chief Cliff Jones.
- Mayor Hallman read the proposed **Board and Commission Reappointments:**

Aviation Commission	Terms Expire 12-31-10
Richard Pagoria	Reappointment (1)
David Swanson	Reappointment (1)
Board of Adjustment	Terms Expire 12-31-10
Slade Lawson	Reappointment (*)
Wallis Stemm	Reappointment (1)
Human Relations Commission	Terms Expire 12-31-10
Zach Berning	Reappointment (*)
Colleen Byron	Reappointment (*)
Safali Patel-Evans	Reappointment (*)
Janis Webb	Reappointment (*)
Judicial Advisory Board	Term Expires 7-17-09 (U)
Judge Mark Aceto	Replaces Stephen Sheldon
Municipal Arts Commission	Terms Expire 12-31-10
Robert Bortfeld	Reappointment (*)
Ed Coyoli	Reappointment (*)
Betsy Fahlman	Reappointment (*)
Kate Hanley	Reappointment (*)
Chin-an Shen	Reappointment (1)
Richard Strange	Reappointment (1)
Neighborhood Advisory Commission	Terms Expire 12-31-10
Don Calender	Reappointment (1)
Greg Ellison	Reappointment (1)
Andy Hall	Reappointment (*)
Kevin Kaesberg	Reappointment (*)
John Sanborn	Reappointment (1)
Harold Wilson	Reappointment (*)
Police Citizens Review Board	Terms Expire 12-31-10
Dale Despain	Reappointment (1)
Mike Hayes	Reappointment (1)
Ward Jacox	Reappointment (*)
Jeffrey Millen	Reappointment (*)

Rio Salado Advisory Commission	Terms Expire 12-31-10
Alana Chavez	Reappointment (*)
Julie Ramsey	Reappointment (*)
Brett Siegal	Reappointment (1)

Transportation Commission	Terms Expire 12-31-10
Jayson Matthews	Reappointment (*)
Joan Westlake	Reappointment (*)
Corey Woods	Reappointment (1)

B. Manager's Announcements

City Manager Charlie Meyer announced that he has been busy getting acclimated to the City of Tempe and looks forward to future meetings.

5. AGENDA

All items in these minutes identified with an asterisk (*) are **public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

Motion by Vice Mayor Hutson to approve the Agenda as amended (Items #22 was removed for separate consideration). Second by Councilmember Carter. Motion passed on a roll call vote 6-0, with Councilmember Ellis absent.

A. Miscellaneous Items

5. Approved the extension of the Residential Permit Parking Area 7 to include portions of the Mitchell Park Neighborhood.

DOCUMENT NAME: [20071213PWJD01.pdf](#) **RESIDENTIAL PERMIT PARKING (0503-19)**

- 5a. Approved **Contract #2007-233**, a Stipulated Final Judgment and Settlement Agreement in City of Tempe v. Central Plaza, LLC, et al., CV2005-11501.

DOCUMENT NAME: [20071213pwjsm01.pdf](#) **CITY ATTORNEY ADMINISTRATION (0501-03)**

- 5b. Approved the request for the Mayor to reappoint members to Boards and Commissions.

DOCUMENT NAME: [20071213boards.pdf](#) **BDS, COMMISSIONS, COMMITTEES ADM (0102-01)**

- 5c. Approved **Contract #2007-232**, an Intergovernmental Agreement with the City of Mesa for the Apache Boulevard and Main Street Intelligent Transportation System Project.

COMMENTS: Subject to execution of final written Intergovernmental Agreement. Tempe's construction cost of \$120,000 will be funded with federal grants of \$97,000 and a local share of \$23,000.

DOCUMENT NAME: [20071213PWjd02.pdf](#) **TRANSPORTATION PLANNING (1101-01)**

- 5d. Approved the Report of Claims Paid to be Filed for Audit for the months of July and August, 2007.

COMMENTS: A copy of the detailed claims report may be obtained by contacting the City Clerk's Office.

6. Approved **with conditions** a Condominium Plat for **4455** located at 4455 S. Rural Road.

COMMENTS: (PL070191) (D. R. Horton, property owner; Mark Wood, Biltform Architecture, applicant) a Horizontal Regime (Condominium Plat) for one lot with 30 residential condominium units and 3,600 s.f. of commercial office space totaling 92,996 s.f. on 1.217 net acres, in the MU-3 Mixed Use Zoning District. The request includes the following:

SBD07035 (REC07062) - Condominium Plat

The following conditions were also approved:

1. The Subdivision Plat (Condominium Plat) for 4455 shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department on or before **December 13, 2008**. Failure to record the plan within one year of City Council approval shall make the plan null and void.
2. The owner(s) shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by ordinance or located in any common area on site. The CC&R's shall be reviewed and in a form satisfactory to the Development Services Manager and City Attorney.

DOCUMENT NAME: [20071213dsdk01.pdf](#) **PLANNED DEVELOPMENT (0406)**

B. Award of Bids/Contracts

7. Awarded **Contract #2007-234**, a five-year, limited source contract to NorthStar, Inc., for maintenance and repair services for the liquid/compressed natural gas fueling station at the East Valley Bus Operations and Maintenance Facility.

COMMENTS: (Limited Source #08-077) Total cost for this contract shall not exceed \$2,300,000 during the contract period.

DOCUMENT NAME: [20071213fslq01.pdf](#) **PURCHASES (1004-01)**

- 7a. Approved a not-to-exceed six-month emergency procurement with United Road Towing, Inc., for towing services.

COMMENTS: (Emergency Procurement 08-116) Total amount for community

towing is \$60,000 including \$5,000 of City vehicle towing.

DOCUMENT NAME: [20071213fsta08.pdf](#) **PURCHASES (1004-01)**

8. Awarded **Contract #2007-235**, five-year contracts with one (1) five-year renewal option to Waste Management for the disposal of residential/commercial refuse, Waste Management for the disposal of dewatered sludge, and Hudson Baylor for the processing of curbside recyclables.

COMMENTS: (RFP #08-030) Total cost for these contracts shall not exceed \$22,000,000 (Group III will provide a minimum revenue of \$2,000,000 to the City) during the initial contract period.

DOCUMENT NAME: [20071213fsta02.pdf](#) **PURCHASES (1004-01)**

9. Approved **Contract #2006-11A**, a professional services contract addendum with PCL Civil Constructors, Inc., for the Johnny G. Martinez Water Treatment Plant Water Quality Improvements.

COMMENTS: Addendum to a professional services contract for the amount of \$139,312.34, subject to the final written addendum. The original contract amount of \$415,839 plus approval of this addendum will increase the amount of the total contract to \$555,151.34.

DOCUMENT NAME: [20071213PWCH01.pdf](#) **JOHNNY G. MARTINEZ WATER TREATMENT PLANT (0811-03) PROJECT NO. 3201091**

10. Approved **Contract #2007-209A**, a professional services contract addendum with C. Williams Construction Engineering, Inc., and **Contract #2007-211A**, a professional services contract addendum with Pooled Resources, Inc., for The Pier at Town Lake, Improvement District No. 180.

COMMENTS: Construction management contract addendum in an amount not to exceed \$469,830 with C. Williams Construction Engineering, Inc. The original contract amount of \$29,000 plus approval of this addendum will increase the amount of the original contract to \$498,830. Project management contract addendum in an amount not to exceed \$426,000 with Pooled Resources, Inc. The original contract amount of \$29,000 plus approval of this addendum will increase the amount of the original contract to \$455,000. Both subject to execution of the final written addenda.

DOCUMENT NAME: [20071213PWWS05.pdf](#) **IMPROVEMENT (ASSESSMENT) DISTRICTS (0805-80) IMPROVEMENT DISTRICT NO. 180 PROJECT NO. 5103011**

11. Approved **Contract #2006-250A**, a construction management contract addendum with CMX, LLC for the Johnny G. Martinez Water Treatment Plant – Phase III Ultra Violet Building.

COMMENTS: Addendum to a construction management contract with CMX, LLC for an hourly not-to-exceed amount of \$241,170.15, subject to the final written addendum. The original contract amount of \$258,421.43, plus approval of this addendum, will increase the amount of the total contract to \$499,591.58.

DOCUMENT NAME: [20071213PWCH02.pdf](#) **JOHNNY G. MARTINEZ WATER TREATMENT PLANT (0811-03) PROJECT NO. 3201091**

12. Approved **Contract #2005-81X**, a construction Job Order with 3D/International, Inc., and a construction change order contingency for the IT Fiber Conduit Installation for City Hall Parking Garage Project.

COMMENTS: Job Order in the amount of \$65,924, subject to execution of the final written contract, and construction change order contingency of \$10,000.

DOCUMENT NAME: [20071213PWDR03.pdf](#) **PARKING (0503-19), PROJECT NO. 6702971**

13. Approved a one-year contract renewal with Great West Life/Benefits Corporation for Deferred Compensation Administration Services.

COMMENTS: (T00-001-01) Total amount not to exceed \$100,000.

DOCUMENT NAME: [20071213fsta04.pdf](#) **PURCHASES (1004-01)**

14. Approved the increase of the contract amount with Veolia Transit Services, Inc., for fixed route bus and approved neighborhood circulator service.

COMMENTS: (T07-028-01) Increase in the amount of \$5,894,383 from \$20,085,393 (FY06/07) to \$25,979,776 for FY07/08.

DOCUMENT NAME: [20071213fslg06.pdf](#) **PURCHASES (1004-01)**

15. Approved the utilization of an eighteen-month State of Arizona contract with Titan Power, Inc., for the purchase of uninterruptible power supply equipment, service and maintenance.

COMMENTS: (EPS070086-1-A1) Total amount not to exceed \$150,000.

DOCUMENT NAME: [20071213fst07.pdf](#) **PURCHASES (1004-01)**

16. Approved the utilization of a State of Arizona Contract with Courtesy Chevrolet for the purchase of five vehicles.

COMMENTS: (Contract SCC070002-A4) Total cost of this contract shall not exceed \$92,500.

DOCUMENT NAME: [20071213fsta05.pdf](#) **PURCHASES (1004-01)**

17. Approved the utilization of a State of Arizona Contract with McCandless of Arizona for the purchase of a chassis to be outfitted for use by the Public Works Department.

COMMENTS: (Contract SCC070002-A4-7) Total cost of this contract shall not exceed \$84,000.

DOCUMENT NAME: [20071213fsta03.pdf](#) **PURCHASES (1004-01)**

- C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *18. Introduced and held the **first public hearing** for a Zoning Map Amendment, Planned Area Development Overlay for **CAMPUS SUITES ON THE RAIL** located at 1900 E Apache Boulevard. **The second public hearing is set for January 10, 2008.**
COMMENTS: (PL070312) (Gordon Phillips, Campus Suites on the Rail LLC, owner / Paul Gilbert, Beus Gilbert, PLLC, applicant) for a Zoning Map Amendment from CSS and R-4 in the Transportation Overlay District (TOD) to MU-4 TOD with a PAD for a 619,756 s.f. new student housing development on +/- 6.8 net acres located at 1900 E. Apache Boulevard, in the CSS Commercial Shopping and Services and R-4 Multi-Family districts in the Transportation Overlay District Station and Corridor Areas, including the following:
ZON07011 – (Ordinance No. 2007.77) Zoning Map amendment from CSS Commercial Shopping and Services and R-4 Multi-Family in the TOD to MU-4 TOD Mixed-Use High Density with a Planned Area Development (PAD).
PAD07026 – Planned Area Development to define the development standards: building height of 70 feet; building setbacks of 0' front, 10' side, 10' rear; 14% landscape area and 45% building lot coverage; 41 du/ac and 1084 parking spaces.
DOCUMENT NAME: [20071213dsdk02.pdf](#) **PLANNED DEVELOPMENT (0406)**
- *19. Introduced and held the **first public hearing** to amend Chapter 27 of the Tempe City Code relating to Sewers and Sewage Disposal. **The second public hearing is set for January 10, 2008.**
DOCUMENT NAME: [20071213cacc02.pdf](#) **SEWERS & SEWAGE DISPOSAL (0503-27) ORDINANCE NO. 2007.83**

D. Ordinances and Items for Second Hearing/Final Adoption

- *20. Held the **second public hearing** and approved ORDINANCE NO. 2007.81 amending the Tempe City Code, Chapter 8, relating to Building and Building Regulations, by amending Article I, Section 8-111, to allow rebates of Building Safety fees for improvements on single family residences.
DOCUMENT NAME: [20071213dssf01.pdf](#) **TCC CH 8 – BUILDINGS AND BUILDING REGULATIONS (0503-08)**
- *21. Held the **second public hearing** and approved ORDINANCE NO. 2007.82 amending Chapter 24 of the Tempe City Code relating to Peddlers, Solicitors and Itinerant Merchants by amending Sections 24-16 and 24-17 and repealing Division 4 relating to Sidewalk Cafes.
DOCUMENT NAME: [20071213cacc01.pdf](#) **TCC CH 24 – PEDDLERS, SOLICITORS & ITINERANT MERCH (0503-24)**
- *22. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**
Held the **second public hearing** for a Planned Area Development Overlay for ONE

HUNDRED MILL AVENUE located at 100 South Mill Avenue.

COMMENTS: A LEGAL PROTEST HAS BEEN FILED IN THIS MATTER; THEREFORE, A 3/4 COUNCIL MAJORITY (6 of 7) IS REQUIRED FOR APPROVAL. The Development Review Commission (DRC) voted 5-1 in favor of this proposal, with modified conditions, the Historic Preservation Commission voted 7-0 for approval of historic building modification. Staff is recommending approval of the proposal, subject to Conditions 1-9, recommending reduced heights for Phase I different from DRC recommendation. An affirmative vote by 6 of the 7 Councilmembers would result in approval of the project as recommended by staff. (PL070354) (Michael Monti, property owner; Tony Wall, 3W Companies, applicant) for redevelopment of the existing Monti's La Casa Vieja site, for two new buildings consisting of hotel (300 suites), commercial and residential (230 units), including preservation of a portion of the existing historic building, located at 100 South Mill Avenue in the City Center District, Transportation Overlay District, and a Historic Designated Property. The request includes the following:

PAD07021 – (Ordinance No. 2007.67) Planned Area Development Overlay to modify Transportation Overlay District standards for two (2) buildings with proposed building heights of 300 feet for Phase I and 325 feet for Phase II, and reduce the required parking from 1,141 to 1,051 spaces.

APPLICANT PRESENTATION

Paul Gilbert, 4800 N. Scottsdale Road, Scottsdale, on behalf of the property owners, Michael Monti and Eddie Goitia. The Development Review Commission (DRC) voted 5-1 to approve this project at heights of 320 feet and 300 feet on November 13th. On November 8th, the Historic Preservation Commission (NPC) voted unanimously, 7-0, to approve this project. Since the DRC hearing and since staff prepared its report, he stands before Council tonight with a "no hazards" letter from the Federal Aviation Administration (FAA). He has been willing to compromise as this project has been analyzed. The original proposal included an overhang over the Monti's building. There was early opposition from the HPC with that proposal, and a major change was made. The current proposal eliminates any overhang over the Monti's building. The historic portion is preserved and the HPC has given its support. This is probably the most historic site in Arizona; he emphasized the importance of this project maintaining 100% of the historic portion of Monti's.

Mr. Gilbert continued that the proposed PAD encompasses approximately 2.5 acres. The subject property is bounded by Rio Salado Parkway to the north, Maple Avenue to the west, Second Street to the south, and Mill Avenue to the east. The purpose of the PAD is to permit the construction of two major buildings. Phase I along Mill Avenue now includes a 285 foot (25 stories) residential boutique hotel, changed from 300 feet. Phase II is along the Rio Salado Parkway and includes a 300 foot building, changed from 320 feet. They are proposing those as the ultimate heights, including all mechanical. Both towers have amenity decks on the roofs due to necessary components with close proximity to a transit station. These components are, in fact, many of the same things that US Airways wanted to develop in this immediate area.

Mr. Gilbert stated that the question has been raised as to whether this project is compatible with the surrounding properties. He stated that the project as designed is both consistent and compatible with development in the

surrounding area with regard to use, height and density proposed. This also includes reference to the natural objects such as the adjacent Tempe Butte at 330 feet (370 feet to the top of the antenna). They also feel they are compatible with prior approvals. The intention of the project is to take advantage of all the renewed activity along the dynamic Mill Avenue, as well as Rio Salado Parkway. The property is close to retail, dining, offices and entertainment areas, not to mention Tempe Town Lake and Tempe Beach Park. The light rail station also provides another significant reason why this project should be approved as presented. The proposal is consistent with the City's General Plan 2030. This site is designated for MU and high density residential at 25+ dwelling units per acre. The project is also compatible to existing zoning development standards. The project sits within the CC (City Center Zoning District which permits residential and retail uses as a matter of right). The proposed PAD will also meet the City of Tempe's goals of creating innovative ways to energize and revitalize the City as well as helping promote a sustainable downtown area. Additionally, the entire proposal is within the Transportation Overlay District and provides a critical residential component that is lacking in the immediate area, along with the hotel user to create the necessary mass of people that would use mass transit. Importantly, the project is preserving Monti's and saving the most historically significant building in the City. Not all proposals would be able to do that.

Mr. Gilbert summarized that the Phase I building is approximately 100 feet away from the Rio Salado Parkway. It also exceeds the City staff's recommendations. They propose a setback of 35 feet at the 61-foot height level along Mill Avenue which is larger than staff has suggested. This is a comprehensive plan that connects, acknowledges and supports the Mill Avenue experience which specifies that appropriate vertical development opportunities be taken advantage of, particularly in a land-locked city such as Tempe. Pursuant to the hotel industry standards, a minimum of a 300-room residential boutique hotel is recommended. Views are important to the hotel industry and that is the hotel building would be placed at the corner of Mill and Rio Salado Parkway. The Mill Avenue address is significant for any hotel user, as well. The recent Urban Land Institute (ULI) report has identified the three most prominent intersections in Arizona, one of which is Mill Avenue and Rio Salado Parkway. The other two intersections don't have the opportunity that this site has. This site has the Tempe Town Lake, the Butte, downtown Tempe, historic connections, and light rail stations. The site mandates a very aggressive plan to take advantage of that designation. They are also supported by the Downtown Tempe Community (DTC). Their letter states that "this project creates a vital link between north Mill Avenue, south Mill Avenue, and Tempe Lake." They have also proposed that some design considerations are examined and they are willing to do so.

Mayor Hallman clarified that Council is looking at concepts, merely massing studies about how big the buildings will be. The buildings would not necessarily look anything like those presented and the project would be subject to the City's entire design review process in terms of materials and appearance.

Mr. Gilbert continued that the DTC is in favor of what is being presented. This proposal adds to the pedestrian experience along Mill Avenue. The setback is an important part of the concept. Staff has suggested a 15-foot setback at 50 feet and 25 feet at 75 feet of height. They are exceeding that by proposing a 35-foot setback at the 61-foot height to the top of the building.

Dennis Newcomb outlined that at the 35-foot height, the actual setback is about 9 feet, and then it goes up to 126 feet.

Mayor Hallman asked for clarification that this building didn't end up complying with the guidelines regarding the further setback.

Mr. Gilbert would not offer comment on that, but pointed out that their setback is greater than the setback of the building behind the project. Their proposal has a solid recommendation of approval, although they are in slight disagreement with staff. Staff is recommending approval of a Phase II building at a higher level than they are proposing. Staff is recommending approval of a height of 220 feet for the building along Mill Avenue, and they are slightly higher than that at 225 feet. Importantly, they are present with a 5-1 vote by the DRC in favor of this proposal and a unanimous recommendation of approval by the HPC. They are flexible and willing to work with the Council if Council feels the proposal is too high or too massive. They are also willing to develop the parcel with one of the two following alternatives in addition to what has been presented: (1) Three buildings rather than two and limiting the height of those three buildings to under 257 feet. (Although they have a sign-off of the FAA, they are willing to reduce the heights to 257 feet and 252 feet because in some negotiations, US Airways has indicated they have some new planes and that the height may be a problem to them.) (2) They are also willing to have two buildings with, in addition to the reduction he has indicated, one at 300 feet in height (Phase II) and 257 feet for the building along Mill Avenue (Phase I). This demonstrates their flexibility.

Vice Mayor Hutson stated that the drawings show Monti's as a very large building. He asked for clarification about preserving the historic portion of the building.

Mr. Gilbert responded that the historic portion of the building is that portion which was originally part of the Carl Hayden development. Monti's has had several portions added on and those are not considered historic.

Michael Monti, 603 E. Fairmont Drive, Tempe, added that his father made two significant additions to the building in 1968 and 1978. There is an area where they cut through the adobe to add the Mill Room and the later additions would be removed because they are not deemed historic. They would preserve an 11,000 sq. ft. area which includes the fountain and the perimeter adobe walls.

Mayor Hallman clarified that the building itself is 11,000 sq. ft, but there are setbacks behind that to separate it from other buildings and around it as would be required by City building code. If that building were removed, then it would be free to be developed in any way. What is the approximate square footage and the cost for the loss of real estate for development purposes for the building remaining?

Mr. Monti responded that there is at least 11,000 sq. ft. and he believes at that location it could go up 75 feet at least. If that building didn't exist, then that restriction wouldn't be there and it could go up much further. He deferred to the architects to answer the exact calculation of square feet, but tens of thousands of square feet of prime real estate that fronts Rio Salado Parkway and Tempe Beach Park has been given up in order to preserve the structure.

Councilmember Shekerjian clarified that one of the things they would consider doing is the 257-foot building on the Mill Avenue side and she asked if that includes all of the mechanical.

Mr. Gilbert responded that it does.

Councilmember Shekerjian clarified that when staff recommended 220 feet, they would also get about 20 feet for the mechanical equipment, so it would be about 12 feet different at 245 feet.

Mayor Hallman asked Chris Anaradian if that was correct.

Chris Anaradian responded that the recommendation staff is bringing out of the DRC congealed a consensus among the developer, the DRC and staff that the mechanical equipment would be part of that, so they are speaking of the mechanical equipment being included in the 225 figure.

Councilmember Carter asked the distance of the building from Monti's.

Mr. Gilbert responded that it is six feet away.

Mayor Hallman asked Mr. Anaradian to clarify that the recommendation from DRC was 225 feet and if the proposal just made was that it would be 257 feet, since that would include the mechanical equipment, it would be 32 feet different from staff's recommendation. That is still bringing the other building down to 300 feet, so it is 20 feet short of staff's recommendation.

Mr. Anaradian clarified that staff's recommendation is 225 feet which includes mechanical. They haven't reviewed any documents with other site formations.

Mayor Hallman clarified that he was speaking of the two-building concept, and that if they are proposing 257 feet which includes mechanical, that is 32 feet taller than staff's recommendation for the Mill Avenue building, but 20 feet shorter than staff's recommendation on the west building.

Councilmember Shekerjian asked for clarification on staff's recommendation and what the DRC approved.

Mr. Gilbert responded that the DRC approved 320 feet and 300 feet.

Councilmember Shekerjian clarified that the DRC approved 320 feet and 300 feet, and staff recommended 225 feet and 320 feet.

PUBLIC HEARING

Stephen Earl, representing US Airways, stated that the US Airways world headquarters immediately adjoins this property to the west. They are a key member of the ownership group of both the property to the west and the property to the south, so they are the most directly affected property owners. They support the preservation of Monti's and congratulate the applicant for working with the HPC and the City to preserve Monti's. They also support mixed use development on this site as called for in the General Plan 2030, and that includes the condos, the resort and the retail. They also support mid-rise development heights as called for in the downtown guidelines and have expressed their willingness to go up as high as 225 feet. The 225-foot height along Mill Avenue is well over the guidelines, but this is not about having the tallest building. They have submitted a letter

to the Mayor and City Council about the avionics of the new aircraft that US Airways has purchased and have pointed out that the east building could be no higher than 257 feet and the west building at 250 feet without hurting future avionics. Their concern, however, goes beyond avionics. Their concern pertains to the total buildings proposed at 300 feet and 325 feet and the associated intensity which is over 1,172,000 sq. feet, six times the intensity of the adjacent headquarters building on more land. They don't believe this request is consistent with the immediately adjoining building. The highest part of the SunCor building is 200 feet. The Hayden Flour Mill and the silos are only 161 feet. The US Airways building is 144 feet, and the Gateway project to the south is 132 feet. There are buildings over 300 feet in the distance, but those are deeper into the downtown and the guidelines call for 300 feet to be deeper into the downtown. Their building, even at 225 feet, would still be the tallest building in the area. The entire eastern half of the Monti's property is shown at 75 feet maximum height. The Gateway project just south of the Monti's property calls for 150 feet. They are saying they should get more building height since they saved the Monti's site. The guidelines don't say that. As it relates to the heritage core, the maximum building height is 75 feet, regardless of what the setback is. They have given a better setback, but there is no provision that says that if the setback is an additional 35 feet, someone can go all the way up to 225 or 257 feet. If that happens, we are getting so far beyond these guidelines that they don't mean much.

Mayor Hallman asked for the height of the Mill Avenue corridor.

Mr. Earl responded that the Mill Avenue corridor goes up to 150 feet.

Mayor Hallman asked for the height of the building south of the US Airways building on 3rd Street.

Mr. Earl responded that it is 83 feet.

Mayor Hallman clarified that when that was built, it was almost three times taller than anything around it. When US Airways built its 144-foot headquarters, it was almost ten times the size of the surrounding buildings, yet US Airways thought that was appropriate. Now a building that is 300 feet immediately adjacent to it within the guidelines is unacceptable because they have not leaped to the height US Airways asked for.

Mr. Earl responded that Council accepted those guidelines last year knowing what they knew about all the heights in the downtown.

Mayor Hallman responded that the purpose of the guidelines is that there would be setbacks on the OPUS building, in which US Airways is a partner, and those setbacks were ignored to allow US Airways to do what it sought to do because they are guidelines.

Mr. Earl agreed that, obviously, they are guidelines.

Mayor Hallman added that the guidelines allowed US Airways and OPUS to violate those principles about two months ago.

Mr. Earl responded that it was his understanding that the setback was not an issue in that hearing, and the

building does not comply with that setback, but it does comply with the total height.

Mr. Hallman summarized that the reason the site was designated as the heritage core was because of the historic Monti's portion and very little care was given to thinking about what portion of that site was actually covered by the historic building. He would hope at the very minimum that Mr. Earl would concede that the parking lot south of it and the buildings that are not historic would have been at the 150-foot size that the OPUS building was given.

Mr. Earl responded that if that were the intent when this drawing was created, they certainly could have drawn the one line south of the restaurant. On an aerial photograph, you can clearly see that the parking lot was included within the heritage core. He did not draft the document. He is only showing what the guideline was.

Mayor Hallman added that one of the people who did draft the document sent Council a letter saying that with the preservation of Monti's, he thought it was appropriate to allow the height that the applicant was asking for in the parcel to the south.

Mr. Earl responded that even if they were to concede that, the Mill Avenue Corridor is 150 feet. Also, on the adjacent building, which is shown as 300 feet, the guidelines say building heights should be lower at district edges and higher in mid block. He believes there is a value to transitioning up toward the taller buildings in the core. The guidelines say that those are maximum heights. They never say the applicant is entitled to the height shown at the maximum. Their position is that there should be a transition. There are impacts associated with this much square footage and one of those is traffic and access, and they are referring to an access point as Maple Avenue. It is actually a private driveway and they have not worked out how that access will work and it will have significant impacts on their operations.

Vice Mayor Hutson stated that he did not appreciate the letter received from the Air Transport Association (ATA). He sent a message back to the Managing Director of Air Space Management and suggested that he read his article in the *Republic* because he didn't know what he was talking about. He would like someone to publicly explain what the engine-out procedures are for US Airways and the difference between engine-out procedures eastbound and westbound.

Mr. Earl responded that he is not an expert in avionics. He has a copy of the ATA letter and the letter submitted by US Airways referring to its new aircraft. This has to do with a takeoff to the east when one of the engines fail. That is a very technical exercise as it relates to how aircraft can maneuver if an engine goes out. The point concluded was that if an engine was out and an aircraft had to make that turn, if these buildings are taller than that, it would be a concern and they would have to reduce the load in the plane in order to have more lift, and that's as far as his expertise goes.

Vice Mayor Hutson stated that the westbound emergency procedures with one engine out go straight west. The eastbound emergency procedures with one engine out go right over the most populated area of Tempe which is the downtown. He has been trying for almost two years to get an explanation. This doesn't make sense for flight safety.

Mayor Hallman summarized that a letter was received on December 11th. On December 2nd, he was at the announcement of the Insight Bowl teams, and he talked to a representative of US Airways and was assured there were no further concerns on aviation issues as they related to the heights of these buildings. The new concern was their location, their impact on traffic and historic roadways in the downtown and the concern by US Airways for how downtown would develop and the purposes of the downtown. His response was that he would believe that except for the fact that US Airways had not cooperated at all to create a better project at the OPUS site, it is instead creating an out-of-ground parking garage that abuts on the 3rd Street alignment which will likely forever preclude the City from having a pedestrian access-way there. Also, the City's desire was that a parking garage perhaps accommodate floor level retail, and we were told that we did not then need to seek to have utilities incorporated into that parking garage because they could be retrofitted afterward in the event retail were added. The level of cooperation and concern for the downtown with that project demonstrated a different attitude. Having been assured there were no further height issues as they affected aviation, Council then received a letter from Paul Lambert, Vice President of Corporate Real Estate, on December 11th saying that US Airways had ordered new aircraft. He was told this last Friday that the board had just decided to buy new aircraft, that the package of new aircraft purchases in \$6.75B, and that it is these new aircraft that might have problems with departures to the east. If Council were to take action tonight to allow buildings higher than 257 feet, those aircraft would be compromised in their operations. He asked if the board of directors was informed of the possibility that they were committing that airline to \$6.75B in contracts to acquire aircraft that might not be able to clear buildings that this Council might approve.

Mr. Earl responded that he was not at liberty to divulge what was discussed at that board of directors meeting. That is confidential. The Mayor asked why Council received a letter a couple of days before this hearing relating to avionics of a new aircraft.

Mayor Hallman clarified that he didn't ask that. An action has been taken by the board of directors to buy new aircraft and those new aircraft and their avionics would not allow them to safely clear buildings that are 258 feet tall in downtown Tempe. He finds that peculiar, especially when there is a butte less than 800 feet due east of this site that exceeds the proposed height of these buildings by almost 100 feet. How does one explain that US Airways can clear the Butte only 800 feet away and that 800 feet is likely covered in less than 2 seconds? How can one stand here and say that 258 feet is too tall at Mill Avenue and Rio Salado on the south side, but that the butte should not have to be shaved off to accommodate these aircraft?

Mr. Earl responded that since he was not an avionics expert, he would be happy to provide a copy of the avionics report.

Mayor Hallman stated that this is the basis upon which there is an objection and he finds it unconscionable that the materials would not be supplied or a representative would not be present to answer these questions.

Mr. Earl responded that their concerns relating to these buildings went far beyond avionics. That's why they discussed their concerns at the DRC meeting. That's why they have suggested that if the guidelines say 75 feet or even 150 feet, then how can they be talking about a 300-foot building along Mill Avenue?

Mayor Hallman responded that these guidelines were accepted only a year ago. What if Council hadn't

accepted them? Would Mr. Earl still be here?

Mr. Earl responded that he would be here, certainly as it relates to the guidelines. He wouldn't be mentioning them if Council hadn't adopted them. He added that the other point he was making about the surrounding buildings is that none is even remotely close to including the silo.

Mayor Hallman asked Mr. Earl to answer his earlier point. In every instance in which US Airways has asked to have a building built, the building substantially exceeded the surrounding buildings. US Airways used to be in the corner building at 3rd Street and Mill which was a one-story building. When a new building was built, it was a five-story building which exceeded that height by almost five times. When the next building was built, that exceeded the prior building by nearly 100 feet. Now the complaint is that US Airways somehow is entitled to stop others from doing the same thing they did over their history.

Mr. Earl responded that Mayor Hallman had used the word "entitled" and he didn't believe they are entitled to anything. He is present as a representative explaining their concerns. Council can choose to ignore those concerns.

Mayor Hallman clarified Mr. Earl's concerns: (1) Avionics has expressed in a letter on December 11th the contents of which he cannot discuss because he is not an expert; (2) the guidelines which only were accepted a year ago are merely guidelines, and if Council hadn't adopted them, there would be no complaint from him; and (3) these buildings would be taller than the immediately surrounding buildings. That may be true, but US Airways happily allowed that to happen when it was in their interest.

Mr. Earl responded that it puzzled him that Council has a right to approve buildings. We can tonight determine whether we believe these buildings are in character with the surrounding buildings or not. If Council chooses to believe that 300 feet or 325 feet is "in character", that is Council's choice. As a resident of Tempe and representing his client, he doesn't believe they are.

Ruthann Arredondo, Tempe, stated that Council is forgetting their purpose. We have guidelines which were developed to protect the entire community, not any specific business interest. We need these businesses and they are all important. When the businesses come and go, the bottom line is that the City of Tempe will be left with the buildings that are here. Those guidelines were developed to try to make our community look like a community, and she felt the Mayor was ignoring the community. That's who should be heard. The guidelines were developed by the community, not by Council, not by staff, not by the businesses, but by a group of people who came to consensus that this is reasonable. If the guidelines don't mean anything, then why is Council wasting its time? It's another example of government saying they are going to do one thing and ignoring them.

Don Leem, Tempe, stated that Tempe has the best downtown in the Valley. It has had good leadership and stewardship over the years. He supports the proposal. This group of people could sell the property and walk down the street for a bunch of money, but they have elected to develop it so they have control over Monti's. That is a key issue.

Mike Wasko, Tempe, stated that the guidelines have value. What is demonstrated here is that every time

Council deviates from the guidelines, it gives less and less weight and makes it more difficult to make future projects conform to the guidelines. When guidelines are exceeded, then there should be ample reasons to support that. Along Mill Avenue, he thinks there is a good reason to maintain at least the 150-foot Mill Avenue Corridor proposed in the guidelines. That provides a good sense of scale. Proceeding away from Mill Avenue, more height is acceptable. Along Rio Salado, the mass of the proposed buildings would be blocking the view of those who would come later.

Mayor Hallman added that DMB, which is the last project we entitled with their proposals, supports this project, and they are probably the ones closest to being within the alignment. Centerpoint supports this project. There is only one other piece of property left that would be entitled to this kind of height and that is the one between Fifth and Third Street at Ash Avenue, which is obviously behind US Airways and to the south. So far, everyone you would be concerned about seems to be supportive of this project.

Mr. Wasko agreed that would be all the proposed projects, and that is looking primarily from the south to north. There still would be a view from the southeast looking to the northwest and views from the southwest looking northeast. Potentially, there may be the opportunity to change the planned development on that block. Perhaps there could be a stipulation that along the Rio Salado corridor there could be a 200 foot maximum elevation. Again, it's the massing. Keep the height in the southwest quadrant of that property and it would pull all of the higher elevation massing away from Mill Avenue and off of Rio Salado. He would also suggest looking at what the City is asking developers to provide in the way of green buildings.

Jim Mack, Tempe, stated that he saw the first plan for Tempe in 1970 and it didn't look at all like the plan he saw this evening. We progress as we go along and changes occur. He is proud of the way the Monti family has tried to give our community something we can be proud of. We can be proud of something as momentous as this development in our community. Staff has done a good job in looking at the heights. The community should support this.

Carl Hayden, Tempe, stated that his family has lived here for over fifty years. He supports the project and Monti's has gone above and beyond in the community. This project can be a great asset to Tempe.

Dave Despain, Tempe, stated that we need to recognize change. He is not familiar with all the technical aspects, but he speaks from the heart. He is a patron of Monti's. It is important to him that it be preserved. He has reviewed the plan and has tried to imagine the kind of buildings, and he feels this is a great plan. It would make a dynamic gateway and he urged Council to respect the efforts that have been made to preserve that property. Look at the total project and what is being accomplished.

Trevor Barger, Tempe, stated the downtown is a center of activity and interest and it would be a beacon to come across Town Lake and see the skyline. Monti's is an interesting building and it is almost more important socially than it is architecturally. It is exciting that it be brought into the center of activity with new structures bringing that light and vitality. It will be an incredible place too sit and watch a 4th of July celebration. It is a beautiful location to sit in the hotel in the morning and watch the sun come across the lake and see the Papago Buttes in the background. This site offers a special view of what we have. The development will go a long way to add to the activity to that part of the street. Currently, it's missing. It will extend the activity all the way down

to the beach.

Mayor Hallman asked how he would justify the City violating those guidelines if they were to adopt what Monti's has proposed which is 285 feet and 300 feet?

Mr. Barger responded that the 300-foot building is in the 300-foot zone, and while the guidelines speak about tapering from a front edge, it seems like such a vital edge that it would be a shame to step away from that rather than add the activity right up to it.

Mayor Hallman added that Mr. Barer has been working with the people at the Newman Center on a new building project, and that project has a height limitation in the guidelines of 150 feet. The proposal that is being moved forward appears to be substantially taller than that.

Mr. Barger responded that it is substantially taller. As guidelines, one didn't think of all the possibilities that might come forward for such a structure and looking at the existing structures and their likely use in the future, one would look at the site and say "it's always been a church and it will likely be a church, and there's no reason to have a tall church." A height like this would be an acceptable piece. You will also see it sitting over the top of a fire station with the same general reasons. When the guidelines were being proposed, the Newman Center and other properties in the downtown had no particular reason to stand up and protest because future opportunities weren't considered. Now we have an opportunity that came since the guidelines were adopted. Someone might suggest having a Catholic residence hall as part of a church campus on the site and that seems like a wonderful element that it is context with some of the other heights that have been approved in the surrounding area. It's the same with the Monti's corner. There was an historic structure there and it was important socially to the City. There was probably some height associated with it but no one suggested obliterating Monti's. He didn't think anyone took the time to figure out at the moment whether it would go to the back wall of the fountain or to the end of the parking lot or to the back of the second or third addition to the structure. It was a general application of saying that in this area, this structure would have these concerns and we wouldn't want something towering directly over the top of the building.

Mayor Hallman stated that it was suggested tonight that this was somehow a community document, and he recalled that the people who put it together were two people, Mark Vinson and Stu Siefer, and it was then forwarded through staff and ultimately to Council and it was only presented to Council. Were you involved in the development of that?

Mr. Barger responded that he has often had the opportunity to work with Decision Theater and so had an opportunity to see it after Council looked at it, but nothing more than curiosity.

Pat Hatton, Ex-Councilmember, Tempe, stated that she was recalling 1976 when the first proposal for the downtown was made. It hardly had any imagination at all. In looking at what has been happening in just the last three to five years, it is so exciting. Sometimes she thinks we limit ourselves by saying we will only allow this or that.

Mark Vinson, City of Tempe Principal Architect, summarized that the Historic Preservation Commission had

one information-sharing meeting and two hearings. There were a number of requests and it was their feeling that the applicants very much accommodated those requests. As far as the removal of the portions that date to the 1960's and the 1970's, that is good historic preservation to move them. The most important aspect is the Sonoran row house dating from the late 19th century, and the 1920's addition of the patio. The fact that we started out with a concept, totally undeveloped, and the fact that the developer agreed to totally avoid the 11,000 sq. ft. of the historic building was very much a "win" for the HPC and something we greatly appreciated. His opinion is that the two towers are very handsome buildings and the fact that they are set back and even if a tourist knew nothing about Monti's, the fact that this low-slung adobe building is there by itself with big buildings behind it, you know that it is an important building. Jim Garrison, the State Historic Preservation Officer, referred to it as the most important building in the Salt River Valley. It is also the oldest adobe in the Salt River Valley. The HPC is very pleased with the outcome.

APPLICANT'S RESPONSE

Michael Monti stated that this has been a project of much controversy because this is Tempe's prime corner. He wants to do the right thing. The last year has been a roller coaster of emotion for his family and for Eddie's family as we manage and perpetuate our business as we negotiate our way through the public scrutiny of building these buildings. The time is right for this and they have sought to do this because it solves problems for them and because it is in accordance with what is happening in Tempe. They don't want to be the unreconstructed dinosaur throwback in the middle of all the brilliant new development in Tempe. They want to do something to develop their land to its highest and best use while acknowledging the crucial historic structure. During the last year, the price of fuel, price of goods sold for our food, and price of labor has skyrocketed. They have tried to stay in their box and not get out of their niche in the market, but they also have absorbed many new costs. He says this, not because Council owes any special consideration to his business, but because he operates out of the most significant historic structure in the State and he needs to save that structure. This deal is what saves it. While he can control the shape and destiny of that corner, not only the historic structure, but also the aesthetic and business outcome, he wants to do so. If he loses control and has to sell it at some point because it's gotten out of date and he hasn't faced the challenges of operating in a new business environment as the downtown changes and evolves, the next owner of that property may not have the same regard for its historic value. The next Council may not have that regard. He is asking for Council's help to do the right thing and he believes this is the right deal for Tempe. US Airways just ordered \$6.75B of aircraft. The value of his property and the annoyance of this project is a decimal point for them, but it is his life. This is their world headquarters, but Monti's is his world headquarters. He would ask Council to take into consideration that he is trying to save historic ground-zero in Tempe and preserve it for the future.

Councilmember Carter stated that she appreciates what Mr. Monti has done to preserve such a site. She asked if it causes him heartburn to think about large cranes and construction going on six feet from that historic building?

Mr. Monti responded that there is risk involved, but he has the assurances that those walls will be wrapped for protection. Tony Wall bound himself by contract to protect that structure. That's something that hasn't happened in the previous changes in ownership. He chooses to do business with him because it is an outstanding group of people.

Councilmember Mitchell thinks it is great to preserve Monti's. We all have fond memories of Monti's. Mr. Gilbert mentioned an opportunity of looking at three buildings at 257 feet. It strikes him as an interesting compromise and he could support that.

Mr. Monti responded that they would like to compromise and they want to work this out. He doesn't have the resources to keep coming back. We believe it has to be reasonable. Since they sent a letter to Council alleging that their avionics could function with a building of 257 feet, they thought that would be a reasonable measure.

Paul Gilbert stated that the guidelines seem to be an important and integral part of the discussion this evening.

- First, guidelines are as the name suggests. They are not fixed in stone. There's a wonderful statement in the guidelines that seems to be ignored: "Rather than attempting to fix the future with a set of static standards, these principles are intended to inform the ongoing development/redevelopment of this portion of the community toward the achievement of a high quality build environment with a special sense of place." It is clear that these guidelines are not attempting to set up a static set of standards.
- Second, the Council has not followed these guidelines in other cases. He is not asking for something that hasn't been done. As is clear here, Council agreed to go over 300 feet with Centerpoint and that is not consistent with the guidelines. The OPUS building was not required to comply with the setbacks, so here again is another example of Council's using these as guidelines. Furthermore, staff is also saying this shouldn't be kept at 75 feet; but should go higher. They are a few feet apart from staff, but staff is suggesting that these guidelines should not be strictly construed nor followed under these circumstances.
- Next, the 75 foot limitation was clearly designed primarily in this instance to preserve Monti's. They've done that, so the limitation of 75 feet for the preservation of Monti's is not relevant.
- Next, Mr. Earl has made a comment that the 300 foot limitation is only to be restricted toward the edge of the district. That's not what it says. The district edge is the downtown Mill Avenue District. That's the whole district. He is taking an overlay within the district and saying it is not to be followed because it's near the edge. Basically, the district edge is the downtown Mill Avenue district as a whole, which is the larger area and goes further north, south, east and west. Clearly, there is the right to have a 300 foot building on this property under any interpretation of the guidelines. Also, these guidelines are designed to be flexible and there is no setback on the 300 foot height limit. Every one of these building heights has a setback in the guidelines. The 300-foot does not. Therefore, there is no setback for the 300-foot area. Their own document shows it doesn't apply because there is no setback for the height in the area of 300 feet.

Mr. Gilbert continued that Council can approve this case and not be inconsistent with the guidelines. Mr. Earl showed only a limited area. They are showing the entire district and the buildings in that district that they are proposing are not out of line or out of harmony with the rest of the buildings already approved or proposed, nor out of harmony with the height of the butte. They have committed to preserve Monti's. The HPC was very concerned about this and they have placed a series of stipulations on this case that requires them to come back to them with a specific construction plan that shows they can construct these high rise buildings and not interfere with the preservation of Monti's.

Mayor Hallman clarified that the offer was made at 257 feet, but Mr. Earl said he would support mid-rise at 225

feet. He asked for clarification that it is Mr. Earl's view that the heights of the buildings across the site should be at 225 feet?

Mr. Earl agreed.

Mayor Hallman clarified that 225 feet is what US Airways is advocating, notwithstanding the proposal to reduce the heights to 257 feet. He is concerned about the inconsistency between that and this proposal and the US Airway's letter at 257 feet and 252 feet.

Mr. Gilbert stated that he didn't understand it. They are sticking at 225 feet, but they have given Council a letter that says their empirical data suggests that 257 feet is the height that works for their avionics. In the spirit of cooperation, they have tried to adopt the 257-foot standard. They have agreed to allow three buildings, and the three-building plan wasn't their idea. That idea came from US Airways. We will adopt that suggestion and we will do what they say. We are using the letter they gave to Council that says no building should be above 257 feet and 252 feet. We are basically in harmony with the proposal they made to us and their letter to Council.

Mayor Hallman clarified that there are two different numbers. The 257 feet is the building to the east, and 252 feet is the building to the west. If the compromise were to have three buildings, the real issue would be that anything in the alignment on the parcel of the west building could not be taller than 252 feet, so if a third building or pad were developed behind that, it would need to be at 252 feet. Anything developed on the east parcel would be 257 feet. That means that if they ended up with a building that straddles that, they would have to split that to make sure they are on the guidelines of their letter.

Mr. Gilbert agreed.

Mayor Hallman asked if that was his understanding.

Mr. Gilbert responded that they don't agree with the avionics, but they are taking that and going with it in the spirit of trying to establish a compromise. Also, it is hypocritical that they stand before you and ask to use part of the guidelines to deny this project, but don't use the other part of the guidelines that allow a building of 300 feet. That is inconsistent. They suggested that there was no agreement on Maple Avenue. He has been in sessions with them where they have agreed that an oral agreement is in place and if an oral agreement is not in place, they are in violation because there is a stipulation on the US Airways building that says they have to have an agreement on joint access on Maple Avenue. They either have it, or they don't, and if they don't, that building is in violation of the stipulation and should be torn down because that is a stipulation that has not been complied with. He thinks the better idea is that there is an agreement on Maple Avenue.

Mayor Hallman stated that it answers his question on a document he received that dates back to February 1998 which was the period of time in which the preliminary PAD and final PAD for Phase I on the building which exceeded the surrounding buildings by at least two times. It is written out in the stipulation that the developer (America West) shall provide the City with satisfactory evidence of a cross access onto adjacent property to the east prior to the issuance of a building permit. In reading this, it looked to him as if that also applied to the OPUS property as well. He is now concerned that we have violated our own stipulation in granting the opportunity for

the OPUS building to go forward at all and for the US Airways building to be built in the first instance if this is not in place. He asked if someone could address this.

Mr. Anaradian responded that he would be happy to investigate this.

Vice Mayor Hutson asked for clarification whether it was 275 feet or 257 feet.

Steve Bassett, Architect, responded that the difference from the three-building scheme and the two-building scheme is 50,000 sq. ft.

Vice Mayor Hutson asked for clarification that the difference between the one at 285 feet and the one at 300 feet is a net increase when going to 257 feet with three buildings.

Mr. Bassett agreed.

Councilmember Arredondo stated that he respects Mr. Gilbert and knows that he is very passionate. He clarified that there were four things the developer is willing to negotiate. The first one was 300/320 feet, the second one was 287/300 feet, then adding a third building not to exceed 257 feet, and a fourth option was with two buildings at 300 feet and 257 feet. He noted that Mr. Gilbert used the word "compromise." Who is he compromising with?

Mr. Gilbert responded that they are compromising with US Airways.

Councilmember Arredondo stated that he had said that it was 225 feet.

Mr. Gilbert clarified that a compromise means that both sides give and he is coming down from 300 feet to 257 feet, and they are at 225 feet.

Councilmember Arredondo asked if he and US Airways have ever met with staff?

Mr. Gilbert responded that he hasn't met with both Mr. Anaradian and Ms. Collins. He has met on one occasion, but his client has met on several occasions. They are 225 feet on one building, but they are at 320 feet on the other. He didn't believe they have changed their position, but he is changing his position.

Councilmember Arredondo clarified that he hasn't reached a compromise with US Airways or the City.

Mr. Gilbert responded that was correct.

Councilmember Arredondo stated that as far as this project is concerned, Mr. Gilbert's statement is correct. These are guidelines. At one of our meetings, he recalled that because they are guidelines, efforts need to be redoubled to reacquaint the community members with the notion that we are all neighbors. He asked why he, US Airways and City staff can't sit in the same room and work this out.

Mr. Gilbert responded that he thought they came very close to doing that with one or more of the compromises they presented.

Councilmember Arredondo stated that if US Airways is at 225 feet, is he willing to compromise at 225 feet?

Mr. Gilbert responded he was not. The compromise is a give-and-take on both sides. They are at 225 feet, but they have given Council a letter stating their avionics say 257 feet, so he has used that figure.

Councilmember Arredondo stated that he didn't know why Council is dealing with so much of this right now. Height doesn't have anything to do with the airport. There are still some parking issues and other things. Until those things are packaged, does it make sense to do this without the other issues packaged together?

Mr. Gilbert clarified that they are asking for a general concept. The details of that package are worked out in design review. He didn't believe there are issues on the easement. In his discussions with US Airways, they have said they are primarily concerned with the height.

Councilmember Arredondo clarified that at 225 feet, it would still put the Monti's building 150 feet higher than US Airways.

Councilmember Shekerjian asked Mr. Gilbert to define what a compromise is.

Mr. Gilbert responded that a compromise is an agreed-upon adjustment where both sides give and meet somewhere in the middle.

Councilmember Shekerjian asked if he and his client have made some compromise on his part in terms of the height and whether it is his experience that US Airways has said this is the level and that's it and they haven't compromised with your client?

Mr. Gilbert responded that US Airways has been at 225 feet in all negotiations. He has come down and they have never come up.

Councilmember Shekerjian stated that in her experience, everyone gives a little bit. He and his client have tried very hard to find a compromise with US Airways but they have not been willing to work with them and that the sands have shifted in terms of issues.

Mr. Gilbert added that he wanted to be fair to characterize the discussions. They have made it very clear that height is their primary concern. They have also made it clear that their primary concern was the avionics. They have also made it clear that they would accept three buildings on the site, so we have addressed all three buildings. They have given Council a proposal to allow three buildings, and US Airways has given a proposal that conforms to the avionics. He has basically agreed with them and their major concern. He was shocked that the compromise negotiation where they provided the avionic information said they were only at 225 feet.

Councilmember Shekerjian asked if they gave any reason for that.

Mr. Gilbert responded that the reason was that the person making the decision at US Airways had told them to stick with 225 feet.

Councilmember Shekerjian stated that she appreciated the willingness and spirit of compromise that he and his client have engaged in this process. There were some comments regarding community input and the feedback she has received via phone and emails have been overwhelmingly supportive in terms of seeing this happen and understanding the preservation of Monti's. What height did the DRC approve?

Mr. Gilbert responded that the DRC approved a height of 320 feet and 300 feet.

Councilmember Shekerjian asked for clarification that the HPC approved it.

Mr. Gilbert responded that the vote was unanimous and they approved the height originally proposed.

Councilmember Shekerjian asked for the DRC vote.

Mr. Gilbert responded that one was absent, so the vote was 5-1.

Councilmember Shekerjian added that both the DRC and the HPC are community-based organizations of citizens who volunteer their time to serve and take an in-depth look at these kinds of projects. She agreed that the guidelines are something that need to have flexibility and Council showed that flexibility with the OPUS building in terms of their setbacks, and has also done that at other times. She met with US Airways and has thought a lot about their comments. While she believes that Mr. Earl, being a City resident, may personally have some concerns about the aesthetics of Mill Avenue, to say that US Airways cares what Mill Avenue looks like is disingenuous at best. This is more about height issues than anything else. She hoped a solution can be achieved.

Councilmember Arredondo stated that guidelines are guidelines, so we could really go 75 feet to 400 feet and yet he didn't think that when the number 225 came out, it was a compromise. He thought the City proposed it first and then US Airways followed.

Mr. Gilbert stated that they are at 225 feet, which is the staff position on the one building, but they are also at 225 feet on the other building, where the staff is at 320 feet.

Councilmember Arredondo clarified that he was talking about one building. He didn't have a problem with the second building with a higher stipulation. It's the first building he was concerned about.

Mr. Gilbert asked if he would accept 320 feet on the second building?

Councilmember Arredondo responded that he would not, but he would accept higher than 225 feet.

Mayor Hallman asked what he would accept.

Councilmember Arredondo responded that it isn't his decision. Staff said 225 feet and 320 feet. He is going to stick with 225 feet on the first one, and he would like the second to be under 300.

Mr. Gilbert pointed out that many past mayors and others support this project and he stands before Council in the posture of solid community-wide support. Their only real opposition is from their neighbor, US Airways.

Mayor Hallman stated that it is important to note the concept of compromise. Having participated in some discussions, we have a staff recommendation at 225 feet on the site to the east, and 225 feet and 320 feet on the site to the west. He actually believes that the appropriate height on that site based on concepts and guidelines and the skyline Council is trying to create is 300 feet, including mechanical. In recognition of the fact that that was a compromise reached between the applicant and staff, it didn't quite become a compromise, but it does have some notion of the density that is appropriate for the site based on staff's recommendation. He has looked at ways to get to numbers that make some sense and preserve the concept of this project.

Mayor Hallman continued that it is most important to note that this is something both unusual and important. We have a property owner who has made the determination to pay the cost of assuring the preservation of a building. That is pretty unusual. The mill and silos are also important and were about to be owned by a bank. In order to make sure that the bank didn't take the property and auction it off, the City paid \$11.85M to acquire the site and preserve the mill and silos in place. About two years ago, there was an outcry because the owner of a property, the Farmer-Goodwin House, was going to sell it to anyone who wanted it with the possibility that the building would be torn down. An architectural firm stepped in and agreed they would include an historic preservation easement, but the price for that property was extraordinary and to make up for that cost, Council allowed the development of brownstones on the south side of that adjoining property. The City paid \$1.3M to buy the Eisendrath House from a developer who wanted to tear it down and build condominiums on nine acres of raw Sonoran Desert. We have not yet been able to assemble the money to preserve that building and it has been at risk for deterioration ever since the City acquired it in 2000.

Mayor Hallman summarized that the Monti's site is one of the most important historic sites in this State, and more importantly, to this City. Looking at the cost of this property, one of the most valuable corners in this State, it means that the value of the dirt, not the mud that created the building, is so high that the pressure on most owners would be to allow it to be torn down or at least threaten that and make the City pay for the site, which is approximately \$20M. Instead, this property owner committed his own resources and took a reduction in the price for this property in exchange for making sure the developer had to preserve it in place and has to pay for its rehabilitation. When you add those costs up, looking at the work we have done on the other sites, it is somewhere between \$6M and \$10M in value that this family has agreed to give up to preserve this site, and he believes that deserves substantial recognition in how we are then going forward to preserve this site. The guidelines were adopted by this Council in a meeting at the Decision Theater at the Central City Development Committee of the Whole (CCD-COW) meeting, not by this Council here, after they were created by two people. There was a very clear discussion about the fact that they are guidelines, but the purpose was to help Council make some decisions and give property owners the concept of what we were trying to achieve. The parcel had a building on it that Council believed important to preserve. That site itself could go to 75 feet, and instead it will remain at 12 or 16 feet. They have honored the entire purpose of those guidelines. What then should be the

value applied here? It is a recognition that we need to help pay the costs of that preservation as we have done elsewhere in this community. We are weaving the historic with the new, we are creating an opportunity where both can come together.

Mayor Hallman continued that US Airways has consistently been at 225 feet. Not surprisingly, that is the same height that Sky Harbor has proposed for this site. US Airways' own avionics study says that the site would be acceptable at 257 feet and 252 feet. He is prepared to honor the concerns of our neighbor airline, but when he starts doing the math, he realized that the applicant has been willing to shave off 63 feet from one tower in exchange for bringing the other tower up by 32 feet. That is the spirit of compromise. He is puzzled why US Airways has not changed its position from 225 feet when their own internal analysis suggests that 257 feet for their aviation business is acceptable. That doesn't seem like compromise. Concerning the easement, he would be prepared to make sure that as this project goes forward that Mr. Wall understand that it would be conditioned upon the concept that any easements that US Airways needs to service its property and meet whatever obligation was imposed in 1998 be issued, with the understanding that any easements needed for this project be equally provided. That is fair. Regarding the community input, two people designed the guidelines, one of whom is a City staff member and one of whom is a community member. That community member sent Council a letter stating that this result was within the spirit of these guidelines and the only other people involved as a community were the seven Councilmembers. In addition, there is community input from the Historic Preservation Commission (HPC) and the Development Review Commission (DRC) and both of those community-representative groups extracted compromises and concessions from the proposed that demonstrate big faith.

Mayor Hallman continued that Councilmember Mitchell indicated a willingness to consider three buildings at 257 feet, and that strikes him as the right compromise. He would then, as in the past, seek to have staff work with the proponent to work out the details, just as we have done on every other building project in downtown and along the Lake. When we approved the property to the east of Suncor's current project, at ASU's request, all that was considered was height and massing. No design, no easements, no amounts of money, and no other workings of where sewer and water lines would be nothing. That's how this works. This is only the first step. It provides the massing and appropriate heights. On that basis, he would agree with Councilmember Mitchell and support the compromise offered by the proponent of massing of potentially three buildings, not to exceed 257 feet on the eastern half and not to exceed 252 feet on the western half to be consistent with the letter provided by US Airways.

Councilmember Mitchell added that Mill Avenue needs to have the connectivity to Tempe Town Lake and Rio Salado and that connectivity is vital. The head is Tempe Town Lake, the body is Mill Avenue, but we don't have a neck to connect the two. This opportunity does provide the connectivity needed. Another important element is a hotel. A hotel is vital to Tempe's future including sustainability and economic viability. Hotels are one of the largest sales tax revenue generators for a city. It is exciting that we have over fourteen hotels planned in the downtown. Many of the needs we have to become a niche market for meetings and conferences will be addressed to supplement and complement what's happening in downtown Phoenix through the expansion of the Civic Plaza. That's another regional element that works together, especially with light rail connectivity.

Councilmember Mitchell moved to approve Item #22 with the amendment of up to three buildings not to

exceed the height of 257 feet, with a stipulation that no demolition permits will be issued until construction financing is in place for Phase 1, the inclusion of a no-flip clause, that an easement be completed through the Development Plan Review. Second by Councilmember Shekerjian.

Councilmember Carter added that she would like to hear from their architect. Three buildings at 257 feet tall might not be attractive. We will have one chance to get this corner right.

Mayor Hallman responded that the motion states three buildings not to exceed the height of 257 feet.

Councilmember Carter asked for clarification that that is the intention.

Mayor Hallman asked for clarification that this would be a massing opportunity, but does not provide the opportunity to avoid including the appropriate architectural touches that are required for this site. He is certainly not going to go forward approving buildings that don't meet with what we are working on downtown to have projects that create view corridors, etc. The goal is that they could not exceed 257 feet, and the goal is not to supply significant additional density here, but to provide an opportunity to sort out how to create this combination of buildings to meet the needs of the project to succeed.

Chris Anaradian proposed one mechanism that might resolve this. Normally, development plan review would resolve the final orientation of the building design and that rests with the commission in terms of approval. A stipulation could be added that the approval come back to Council.

Councilmember Carter asked for the square footage.

Mr. Gilbert responded that it is 50,000 sq. ft. in addition to what is being proposed.

Mayor Hallman clarified that even in the combination of three buildings, there would be no more than an additional 50,000 sq. ft. to make up for additional costs associated with creating three buildings rather than two, and no higher than 257 feet. The goal would be to take the combination of the density that exists in their proposed plan with no more than an additional 50,000 sq. ft., which allows them flexibility in creating three buildings. They can't all be 257 feet by the original size of the plates because that would give them a huge increase in density. We are limiting the amount of space so we don't get more density and that could be spread through three buildings based on what is cost effective and works with the architecture we would like to achieve.

Councilmember Carter asked what we are getting for 50,000 sq. ft. more.

Mayor Hallman responded that they have to pay for the cost of adding a third building. He asked about requesting that \$500 per residential unit be contributed at the closing of those units to our affordable housing fund. Is that acceptable as an additional stipulation?

Councilmember Mitchell agreed. Councilmember Shekerjian agreed.

Mayor Hallman clarified the motion: **To approve Item #22 with an amendment that the proposal could include three buildings no taller than 257 feet with the density increased by no more than \$50,000 sq. ft. with additional stipulations as follows:**

- No demolition permits will be issued until construction financing is in place for Phase 1.
- The ownership could not change for the project by more than 49%, leaving a majority holder position for the developer.
- \$500 per unit for affordable housing fund.
- Easement will be resolved through Development Services.
- Design must be approved by Council.

Mr. Gilbert added that they are in an awkward position because allegedly a three-quarter vote is required. They are aware that the motion may not be acceptable to all. It would be acceptable to go with 225 feet for one of the buildings and 275 feet for the other two buildings.

Mayor Hallman clarified that the building closest to Mill Avenue would be the 225 ft. building. He asked Councilmember Mitchell if he would be willing to accept an amendment for the two buildings on the west at 275 feet, with the building on the east at 225 feet.

Councilmember Mitchell agreed.

Councilmember Shekerjian agreed, but added that this is not a compromise, and she was disappointed that our hometown airline can't compromise and it has come down to this that the applicant continues to chip away at their original plans. She will accept this amendment, but she only sees one side compromising.

Councilmember Arredondo stated that he thought the height issues are being resolved, but the other issues involve parking and easements. Those don't have to be agreed on tonight, but there is a clear understanding that until these two things are agreed upon, the project doesn't move forward.

Mayor Hallman clarified that this is part of the process. This is only the height and massing. They will have to design the project, create all of the circulation, parking, easements have to be worked out, and they can't move forward until that is done. It will come back to Council for design. The DRC will only be the next to last stop.

Councilmember Arredondo clarified that Mr. Goitia and Mr. Monti were in agreement.

Mayor Hallman clarified the motion and stipulations as follows: **A motion to amend Item #22 that the eastern most building adjacent to Mill Avenue would not exceed 225 feet, and the other two buildings on the western end would not exceed 275 feet, with the following stipulations:**

- no demolition permits for the current existing building could be issued for the development until construction financing is in place for Phase 1
- The ownership could not change for the project by more than 49%, leaving a majority-holder position for the developer.

- \$500 per residential unit for affordable housing fund.
- The easements will be resolved through Development Services.
- Design must be approved by Council.

Councilmember Mitchell returned to his original motion and Councilmember Shekerjian agreed.

Mayor Hallman stated that the original motion is reinstituted by the mover and the second, that the project will be three buildings no greater than 257 feet in height, that the element of density cannot increase among those three buildings to a number greater than 50,000 sq. ft. from the current proposal originally proposed and approved by the DRC, together with the following stipulations:

- No demolition permits for the current existing building could be issued for the development until construction financing is in place for Phase 1, as evidenced by a statement from the lender.
- The ownership could not change for the project by more than 49%, leaving a majority-holder position for the developer.
- \$500 per residential unit for affordable housing fund.
- The easements will be resolved through Development Services.
- Design must be approved by Council.

Mayor Hallman stated that Mr. Gilbert has indicated that he does not believe the assessment of a three-quarter majority vote is correct by staff and further that because one councilmember is absent, a single vote against would not terminate the project.

Mr. Gilbert added that he would also question whether the three-quarter vote is in effect at all. If one councilmember has indicated he will not support this proposal and since we are theoretically stuck with the three-quarter vote, he would like to have this case continued to have the opportunity for it to be heard by full Council.

Mayor Hallman asked Councilmember Mitchell if he would like to withdraw his motion and instead substitute a motion for continuance.

Mitchell agreed and moved that Item #22 be continued to the next Council meeting.

Mayor Hallman asked Councilmember Shekerjian if she was willing to withdraw her second.

Councilmember Shekerjian withdrew her second and she seconded Councilmember Mitchell's motion in substitution.

Motion passed 6-0, with Councilmember Ellis absent.

- *23. Held the **second public hearing** and approved Code Text Amendment for ZONING AND DEVELOPMENT CODE AMENDMENTS.
COMMENTS: (PL070433) (City of Tempe Development Services Department, applicant) for changes in the Code related to the incorporation of Outdoor Seating provisions which will repeal the section in the City Code related to "Sidewalk Cafes"; new regulations for Tattoo Shops/Body Piercing; and other miscellaneous revisions. This request includes the following:
ZOA07003 – (Ordinance No. 2007.74) Code Text Amendment for changes within the Zoning and Development Code Sections 3-202, 4-406, 4-903, 4-904, 6-305, 6-402, 6-404, 7-114, 7-120 and 7-121 and adding Sections 3-424 and 3-425.
DOCUMENT NAME: [20071213dsrl02.pdf](#) **PLANNED DEVELOPMENT (0406)**
- *24. Held the **second public hearing** and approved ORDINANCE NO. 2007.80 amending Chapter 21 of the Tempe City Code relating to Nuisances and Property Enhancement.
DOCUMENT NAME: [20071213cdjk01.pdf](#) **TCC CH 21 – NUISANCES (0503-21)**
- *25. Held the **second public hearing** and approved ORDINANCE NO. 2007.84 authorizing the Mayor to execute a Special Warranty Deed conveying City Property to Hayden Ferry Lakeside, LLC, authorizing necessary actions, and **declaring an emergency**.
COMMENTS: The City property consists of approximately 128,363 square feet and is being acquired by Hayden Ferry Lakeside at the price of \$712,263.66 as set forth in the DDA dated April, 3, 2000.
DOCUMENT NAME: [20071213cdnr01.pdf](#) **RIO SALADO MASTER PLAN (0112-07-03)**
- *26. Held the **second public hearing** and approved ORDINANCE NO. 2007.88 abandoning a public utility easement, located at 505 South College Avenue.
DOCUMENT NAME: [20071213PWCH04.pdf](#) **ABANDONMENT (0901)**
- *27. Held the **second public hearing** and approved ORDINANCE NO. 2007.87 authorizing the Mayor to execute **Contract #2007-212**, a Development and Disposition Agreement, a parking license and various easements with TEMPE RI, LLC for the development of a Marriott Residence Inn on the former Bandersnatch property.
DOCUMENT NAME: [20071213cdcm01.pdf](#) **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADM (0403-01)**

E. Resolutions

28. Approved RESOLUTION NO. 2007.106 approving and authorizing the Mayor to sign **Contract #2007-236**, a Safe Harbor Agreement under the Endangered Species Act with

the U.S. Fish and Wildlife Service for the Tempe and U.S. Army Corps of Engineers Habitat Restoration in the Rio Salado Project Area and the existing LoPiano Habitat

DOCUMENT NAME: [20071213cacc03.pdf](#) **RIO SALADO MASTER PLAN (0112-07-03)**

29. Approved RESOLUTION NO. 2007.107 authorizing the Mayor to enter into **Contract #2007-237**, an Intergovernmental Agreement between the City of Tempe and the City of Phoenix for the reimbursement of funds by Tempe to bring the City of Tempe onto the joint Phoenix Regional Wireless Network (PRWN)/Trunked Open Arizona Network (TOPAZ).

DOCUMENT NAME: [20071213ITDH1.pdf](#) **COMMUNICATION (1002-00)**

30. Approved RESOLUTION NO. 2007.96 establishing polling places and districts for the March 11, 2008, Primary Election.

DOCUMENT NAME: [20071213clrkck01.pdf](#) **PRIMARY ELECTION – MARCH 11, 2008 (0506-31-01)**

6. PUBLIC APPEARANCES

UNSCHEDULED PUBLIC APPEARANCES

Charles Kirkpatrick, ACT Towing, Mesa, re: towing. Recently there was an RFP by the City of Tempe for an exclusive tow contract. It was staff's position that ACT Towing be awarded the contract. However, at last week's Council meeting, it was decided to postpone that decision for further review. He respects the City's position and he would like to pro-actively participate in any review process in the months to come. Recently there has been some publicity by different organizations regarding ACT Towing. He briefly described the company. The company has been towing vehicles throughout Maricopa County since the mid-1990's. ACT most recently acquired a company known as Diversified Towing, Inc. That company is well-known as Cactus Towing. ACT acquired the assets of Cactus Towing. There have been allegations against Cactus Towing for billing practices, unethical business practices. They are not Cactus Towing. They do not have the same management structure, they follow a very ethical business practice and hold themselves to a high level of integrity. That acquisition was finalized in September. .

Jeffrey Dunn, ACT Towing General Manager, Mesa, re: towing. He has never been affiliated with Diversified Towing or Cactus Towing. He was hired because of his eight years of management experience outside of the towing business. ACT participated in the RFP process with five other vendors. After an extensive review process conducted by the City's review committee, ACT was the recommended provider for the towing award. They have been fortunate to secure other towing contracts, and are the exclusive towing provider for Scottsdale, Chandler, two zones in Mesa, a rotational tower for the Maricopa County Sheriff's Office, DPS, and Gilbert. ACT underwent similar review processes with those other organizations and they, too, thought ACT was the best contractor. At last week's Council meeting, the item was deleted with no written explanation. They are only asking for an explanation.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

- Councilmember Carter extended holiday greetings to City staff and her Council colleagues.
- Councilmember Mitchell announced that a very successful Middle School Boys' Basketball Tournament was held last weekend and he thanked Buddy Davis of the TD3 School District and Mark Richwine for their efforts. He also announced that his wife, Debbie, received her Master's in Education from Northern Arizona University.
- Councilmember Shekerjian extended holiday greetings to City staff and she welcomed the new City Manager, Charlie Meyer.
- Vice Mayor Hutson extended holiday greetings, welcomed City Manager, Charlie Meyer, thanked Jeff Kulaga for his excellent work as Interim City Manager, and thanked staff for their hard work. He also extended congratulations to Chris Anaradian and his wife on the birth of their baby.
- Councilmember Arredondo congratulated City Manager Charlie Meyer. He reminded residents about the Insight Bowl and the Block Party on December 31st.
- Mayor Hallman extended holiday greetings to the community. He extended congratulations to Nikki Ripley and Irish Lee on the recent births of their babies. He added that the Tempe Center for the Arts received an award from the Southwest Contractors for the Best Steel Project. He expressed his anticipation of Charlie Meyer's leadership as City Manager.

Meeting adjourned at 10:50 p.m.

I, Jan Hort, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of December 13, 2007, by the Tempe City Council, Tempe, Arizona.

Hugh Hallman, Mayor

ATTEST:

Jan Hort, City Clerk

Dated this _____ day of _____, 2007.